

1 MR. DAVIS: Yeah, it makes no difference. The cases
2 the Second Circuit ruled upon were wholly owned -- the Beck v.
3 Feldman case was wholly owned. The -- I'm just looking through
4 my papers here for the other case I wanted to talk about.
5 Tower Automotive, which is from this Court. The -- where's the
6 name of the Court? Southern District of New York, Tower
7 Automotive, also in our brief, wholly owned. Both wholly
8 owned. Both cases, the Court said --

9 THE COURT: Was that Judge Gropper? Who was that?

10 MR. DAVIS: One moment. Yes, Judge Gropper.

11 THE COURT: Okay.

12 MR. DAVIS: Both courts -- both the Beck v. Feldman
13 Court and the Tower Court said that, as long as the subsidiary
14 is not a sham -- and that's the standard -- then jurisdiction
15 of this Court does not reach a dispute that the subsidiary may
16 have.

17 THE COURT: Okay. And you just said that y'all --
18 okay. Go ahead. Yes.

19 MR. OSWALD: Your Honor, using your example, this is
20 not a shareholder interest in an entity that's going to be
21 adversely or otherwise impacted by that entity's business
22 dealings, so the Apple/Samsung disputes. These are claims
23 emanating out of the insurance company underwriting the
24 hospitals' claims.

25 The obligation of QIL, the collateral -- the entity to

1 put up the collateral, they're all intertwined. This has --
2 QIL -- it's not QIL's operations impacting a shareholder. It's
3 the -- what are the claims, ultimately, of AIG, what are the
4 allowed, valid claims of AIG against these debtors. And once
5 that is determined, whether by agreement or by the Court or by
6 arbitration, what portion of that may AIG get paid from the
7 collateral? As opposed to getting paid in bankruptcy dollars
8 under the Chapter 11 plan.

9 THE COURT: Do you have any case that distinguishes
10 that scenario that was just put out there on Apple/Samsung?

11 MR. OSWALD: I don't, off the top of my head, but I
12 was running with your example, Your Honor.

13 THE COURT: I -- well, his example.

14 MR. OSWALD: Oh, okay.

15 THE COURT: I just grabbed it. Okay. And you --

16 MR. OSWALD: My sole point is the direct nexus of the
17 proofs of claim --

18 THE COURT: But what I'm hearing --

19 MR. OSWALD: -- filed in this -- in the --

20 THE COURT: -- from you is that this is augmenting the
21 estate if -- if it stays here, possibly.

22 MR. OSWALD: Sure. The debtors believe it ultimately
23 will. I appreciate that, now that we've gotten a statement of
24 the claim, pursuant to Your Honor's -- the so-ordered
25 stipulation; that, pursuant to that statement, they assert the

1 claim now exceeds the collateral. But ultimately, when the
2 claims are determined, we certainly believe the estate will be
3 augmented, and that collateral will be released.

4 MR. DAVIS: If I may, Your Honor.

5 MR. OSWALD: But that's not for today.

6 THE COURT: I know that's not for today. I'm
7 thinking.

8 MR. OSWALD: We don't -- we don't know what the claim
9 is.

10 MR. DAVIS: I would --

11 MR. OSWALD: On this little piece --

12 THE COURT: Mr. Davis, let me ask you a question. You
13 mentioned a moment ago that you are in some arbitration.

14 MR. DAVIS: Yes.

15 THE COURT: So if this Court agrees with you and
16 decides that the Court lacks jurisdiction over the QIL claims,
17 so where do you go to resolve that dispute?

18 MR. DAVIS: Well, like any matter in commerce, the
19 parties first would discuss it; and, if we don't agree, either
20 party can commence an arbitration proceeding to resolve it. We
21 already have an arbitration proceeding, and it's our view that
22 the practical approach at this point would be to assert this
23 dispute, if it turns out to be a dispute, as a counterclaim in
24 the existing arbitration, so as to not delay getting started
25 and getting going. And that's what we contemplate doing, but

1 ...

2 THE COURT: In that -- go ahead. In that merger
3 agreement --

4 MR. OSWALD: I --

5 THE COURT: Go ahead, you want to mention --

6 MR. OSWALD: I was just going to comment again on the
7 arbitration, so we're clear. The arbitration relates to the
8 handling of claims that have already been --

9 THE COURT: Okay.

10 MR. OSWALD: -- dealt with and issues that the debtors
11 have with the handling of those claims, so nobody has taken the
12 issue of these proofs of claim to arbitration.

13 And I took the liberty, Your Honor, if there were any
14 -- on the arbitration, I have counsel for the debtors handling
15 the arbitration is here with us in court. But I understand
16 that hasn't really progressed that much since last we were
17 here.

18 THE COURT: Okay. And I have -- I still have some
19 more questions. I'm trying to understand all this.

20 I think, in the papers, that Saint Vincents Hospital
21 and the Saint Vincents losses were -- are covered under the --
22 you disagree that they are covered under the payment agreement.
23 And is the merger silent with respect to all obligations of
24 Saint Vincents Hospital that were assumed by Saint Vincents
25 Catholic Medical Center?

1 MR. DAVIS: Well, a merger can't be silent because
2 it's a matter of state law when you merge two corporations.
3 All the obligations of each become obligations of the other.
4 And all contracts of one become contracts of the other.

5 THE COURT: We -- okay. I think we need to see that
6 merger agreement. But you're -- you cite New York Business
7 Corporation Section 906(b)(3) for the proposition that the
8 surviving or consolidated corporation shall assume and be
9 liable for all the liabilities and obligations, penalties for
10 the other. And you say this applies?

11 MR. DAVIS: Oh, yes.

12 THE COURT: Debtors?

13 MR. OSWALD: Well, I -- we're a not-for-profit, so I
14 don't think the for-profit provision provides [sic]. But
15 again, just to be clear, I don't disagree with the general
16 proposition that, on a merger, liabilities -- the assets and
17 the liabilities go together. That doesn't necessarily mean
18 that the collateral goes with it. And that, again, comes back
19 to the issue of whether or not, for these four policies, they
20 can look to the collateral.

21 MR. DAVIS: And as to that, there is --

22 MR. OSWALD: Because they're not -- because they're
23 not a party to that payment agreement or the -- or the cross-
24 collateralization agreement.

25 MR. DAVIS: I could address that, if you want to hear

1 why that's an inaccurate statement.

2 THE COURT: Okay.

3 MR. DAVIS: The payment agreement that -- there are
4 two payment agreements, in fact, that are attached to our
5 papers. There's the 1998 payment agreement with Catholic
6 Medical Center, pre-merger, which has been subject to a series
7 of annual schedules, which become part of the agreement. And
8 the most recently signed annual schedule, the one that was
9 signed effective 2009 -- and I can put this on the ELMO, if it
10 would help, Your Honor.

11 THE COURT: Please, please. That makes it easier for
12 me.

13 MR. DAVIS: Uh-huh.

14 (Participants confer.)

15 THE COURT: No, he's putting it on the ELMO, so we all
16 see it at the same time and we all look at it together.

17 MR. DAVIS: This is a schedule --

18 THE COURT: It should be on your monitor.

19 MR. DAVIS: It's in my papers as Exhibit V. It was
20 executed in July -- September of 2009. And it provides that
21 the \$38 million of collateral provided by QIL at that time
22 would be available under the payment agreement.

23 (Participants confer.)

24 THE COURT: No, we can make it better.

25 (Participants confer.)

1 THE COURT: Is it coming up? Y'all see it?

2 UNIDENTIFIED: Uh-huh.

3 (Participants confer.)

4 THE COURT: Okay. There, we can read it clearly.

5 That's good.

6 MR. DAVIS: Getting back to the -- just it's signed in
7 2009, where you see where I'm pointing.

8 UNIDENTIFIED: Uh-huh.

9 MR. DAVIS: And then it provides for the \$38 million
10 of QIL collateral to be available for whatever this covers.
11 And it is between Saint Vincents Catholic Medical Center, which
12 is the merged entity, on behalf of itself, and "all your
13 subsidiaries or affiliates," which would include QIL, I
14 believe, "except those listed below," and there are none listed
15 below. So here, you have a parent agreeing and buying all of -
16 - all of its entities, including QIL. And this is the 2009
17 agreement.

18 It picks up, attaches to, and becomes part of this
19 1998 payment agreement. The 1998 payment agreement says who
20 has agreed to this agreement, and it's the entities named as
21 "client" in the schedule. And we just looked at that, and
22 that's everybody. And then it defines "schedule" on Page 4,
23 and it says:

24 "Additional schedules or amendments may be attached to
25 this agreement from time to time."

1 Which is the most recent schedules, what I just showed
2 Your Honor.

3 And then, if you turn to "default."

4 "Failure by you" --

5 Which is any member of their family of companies.

6 "-- or any of your subsidiaries or affiliates to

7 perform within five days after due date any

8 obligation, you or any of your subsidiaries or

9 affiliates have under this agreement or any other

10 agreement with us."

11 Now at the time the schedule was signed, when the

12 schedule was signed, the "you" included Saint Vincents

13 Hospital. So this language picks up Saint Vincents Hospital --

14 THE COURT: And that was after the first bankruptcy,

15 which was 2005.

16 MR. DAVIS: Yes.

17 THE COURT: This was 2009?

18 MR. DAVIS: This -- this was -- this was signed -- the

19 schedule which adopts this was signed in 2009.

20 Moving to the next page:

21 "In the event of default, we may satisfy your

22 obligations in whole or in part by the collateral" --

23 And then it says, highlighted in yellow:

24 "-- in order to satisfy any" -- and I emphasize the

25 word "any" -- "of your obligations."

1 Saint Vincents Hospital's obligations are obligations
2 that fall within the two words -- three words "any of your" --
3 four words -- "any of your obligations." That's the
4 contractual basis for our right to reach the collateral.

5 Similarly, this is the -- I'm now showing you the
6 Saint Vincents Hospital payment agreement, which was entered
7 into -- this is attached to our reply papers. It isn't
8 attached to our moving papers. And the Saint Vincents Hospital
9 and Medical Center is the party to this agreement. And in this
10 agreement, it provides that:

11 "We can draw upon, liquidate, or take ownership of
12 collateral deposited with us to secure your payments
13 under this agreement, and using such collateral to
14 satisfy or recoup any and all obligations to us."

15 I'm sorry. I may have misread that.

16 (Participants confer.)

17 MR. DAVIS: Oh, yeah, let me read that again, because
18 I misread it.

19 THE COURT: Okay.

20 MR. DAVIS: We're permitted to:

21 "-- draw upon, liquidate" -- "liquidating or take
22 ownership of collateral deposited with us to secure
23 your" --

24 THE COURT: Read it correctly. You didn't read it
25 correctly.

1 MR. DAVIS: Thank you. Draw -- we're permitting --

2 THE COURT: "Drawing upon."

3 MR. DAVIS: We're -- yes, I -- again, I understand.

4 "-- drawing upon, liquidating, or taking ownership of
5 collateral deposited with us to secure your payments"

6 --

7 THE COURT: Did you just say that S -- Saint Vincents
8 Hospital is an affiliate of Catholic Medical Center? Did I
9 just hear you say that?

10 MR. DAVIS: What they are is they are the same entity
11 now, by merger. They are the same entity. They are not
12 affiliates; they are the same. They merged. They --

13 THE COURT: What about pre-merger?

14 MR. DAVIS: Pre-merger, they were -- I don't know if
15 they had any affiliation at all pre-merger. I don't know. But
16 today, they are the same entity.

17 THE COURT: Okay. That's enough. Okay.

18 MR. DAVIS: I'm just -- if I may finish where I wanted
19 to go with this, was, under this -- in the second line:

20 "-- under this or any other agreement" -- "involving
21 collateral under this or any other agreement."

22 So with these three agreements, we have a very
23 substantial, albeit disputed by the other side, claim to use
24 the QIL collateral for the Saint Vincents Hospital obligation.
25 And that dispute, if not resolved by agreement, will require

1 that it be resolved in a proceeding. And as I can also
2 address, the only proper proceeding is arbitration,
3 particularly since it doesn't even involve property of the
4 estate.

5 THE COURT: Saint Vincents?

6 MS. SHEIKH: Your Honor, Lara Sheikh for the
7 liquidating trust.

8 We're finding AIG's arguments here a little bit
9 frustrating because we did set forth in our position statement
10 that we provided to them on July 25th, as well as in our
11 response to their motion, a -- our plain reading of the payment
12 agreement and why we believe -- why the liquidating trust
13 believes that the SVH losses do not arise under that agreement.
14 And AIG did not address in their motion or their reply the
15 statements that counsel just made and their interpretation of
16 these agreements.

17 But I can explain the liquidating trust's position of
18 why the SVH losses could not arise under the payment agreement,
19 which we did set forth in our paper -- in our papers.

20 I will note that the payment -- the second payment
21 agreement that AIG referenced, which is Exhibit H to their
22 reply, is -- is not related in any way to the 1998 payment
23 agreement, for which CM -- Cabrini Medical Centers, and later
24 Saint Vincents Catholic Medical Centers of New York provided
25 collateral in the form of a letter of credit issued by a non-

1 debtor. So that 1997 payment agreement between Saint Vincents
2 Hospital, the pre-merger entity, and AIG is not in any way
3 related to the QIL collateral. I think that's an important
4 clarification.

5 So the references to "collateral provided" under an
6 agreement entered into --

7 THE COURT: Would you put that on the ELMO? I'm
8 trying to follow you --

9 MS. SHEIKH: Sure.

10 THE COURT: -- and I'm looking at what you gave, but
11 just put it on the ELMO for me.

12 MS. SHEIKH: Yeah.

13 THE COURT: You're going to have to put it facing out.

14 MS. SHEIKH: Oh, sorry.

15 THE COURT: There. Just because I'm --

16 MS. SHEIKH: Or this way.

17 THE COURT: There you go. Thank you.

18 MS. SHEIKH: Okay. So this is an agreement between
19 Saint Vincents Hospital, which has been merged into the debtor
20 entity Saint Vincents Catholic Medical Centers of New York. So
21 it's an agreement entered into --

22 THE COURT: But this is an agreement between Saint
23 Vincents Hospital and Medical Centers of New York. So that's
24 in -- CMC?

25 MS. SHEIKH: That's --

1 THE COURT: Saint Vincents Hospital?

2 MS. SHEIKH: We refer to them as "SVH" in our papers.

3 This is the entity that entered into the policies that Your
4 Honor was referencing earlier that give rise to what we've
5 defined as the "SVH losses." So this is the -- a payment
6 agreement between Saint Vincents Hospital, which the full name
7 of that entity is Saint Vincents Hospital and Medical Center of
8 New York, and AIG. And it's -- it has no relation to the 1998
9 payment agreement between Catholic Medical Centers of New York
10 and AIG.

11 THE COURT: So AIG is saying the 1998 payment
12 controls, and you're saying this controls?

13 MS. SHEIKH: Yes.

14 THE COURT: Did I miss something?

15 MS. SHEIKH: And it's -- I'm not -- I'm actually not
16 certain that this is the complete agreement or the current --
17 the last agreement between Saint Vincents Hospital and AG --
18 and AIG.

19 THE COURT: On those four matters. We're only
20 thinking about four matters here, those four contracts.

21 MR. DAVIS: Four policy years.

22 MS. SHEIKH: That's correct.

23 MR. DAVIS: Four policy years might be the way --

24 THE COURT: Four policy years. Okay.

25 MS. SHEIKH: Yeah. If AIG's counsel is representing

1 that those policy years -- let me rephrase that.

2 THE COURT: Okay.

3 MS. SHEIKH: My understanding is that AIG has attached
4 this payment agreement which is the payment agreement that
5 applies to those four policies between Saint Vincents Hospital
6 and AIG.

7 THE COURT: Okay. And my question to you -- are you
8 finished with that statement?

9 MS. SHEIKH: Yes.

10 THE COURT: Okay. Why doesn't it apply today to cover
11 the Saint Vincents Hospital losses for those years, the 1998
12 agreement?

13 MS. SHEIKH: I -- I don't think it's relevant to the
14 issue before the Court today because this payment agreement --

15 THE COURT: Oh, I'm sorry.

16 MS. SHEIKH: -- is not secured by the --

17 THE COURT: I asked the question --

18 MS. SHEIKH: -- QIL collateral.

19 THE COURT: I think I asked the question wrong. Let
20 me look at my chart. I have my chart, too.

21 Before 2000, it was only Catholic Medical Centers that
22 had the agreement with QIL, not Saint Vincents Hospital.

23 MR. DAVIS: Yes, Your Honor.

24 MS. SHEIKH: That's correct. And there -- Saint
25 Vincents Hospital had its own agreement with AIG, which I

1 understand is Exhibit H to AIG's motion. And that agreement
2 provides that Saint Vincents Hospital will provide collateral
3 to AIG to secure the obligations on -- that Saint Vincents
4 Hospital has to AIG. But that collateral is not the QIL
5 collateral. And AIG has not, I don't believe, addressed in its
6 papers, you know, what collateral was provided by Saint
7 Vincents Hospital to secure those obligations. We are -- I'm
8 not aware of what collateral was provided to secure those
9 obligations. But as we set forth in our papers, clearly the
10 QIL collateral could not have secured those obligations
11 because, at that time, Saint Vincents Hospital and Catholic
12 Medical Centers of --

13 THE COURT: So is there a separate pool, collateral
14 pool, for the Saint Vincents Hospital losses?

15 MR. DAVIS: There was. It's been exhausted. Your
16 Honor, I'd like to respond to some of those points.

17 THE COURT: Stop right there. I want to go back to
18 that.

19 MR. DAVIS: Uh-huh.

20 THE COURT: Explain that a little more clearly to me,
21 right there.

22 MR. DAVIS: We were provided with cash collateral for
23 the Saint Vincents Hospital losses during the 1990s. That
24 money has been exhausted. The losses have continued, and the
25 obligations have now come to \$2 million more than the

1 collateral previously provided.

2 During the -- during the 2000s, during the Twenty-
3 First Century, we had -- we were dealing with the Saint
4 Vincents Hospital as a collective entity because they merged.
5 And when we signed the schedules -- and there were annual
6 schedules, year after year after year, entered into after the
7 merger. And in each one of those -- they resemble the one I
8 put up on the screen -- and the one I put up on the screen
9 showed that the \$38 million of QIL collateral was provided in
10 accordance with the 1998 payment agreement.

11 The 1998 payment agreement says that the collateral
12 may be used for, quote, "any of your obligations." And the
13 word "obligations" is lowercase, undefined, and the word "any"
14 is lowercase and undefined. In plain English, the 1998
15 agreement, as augmented by the 2009 schedule, provided that the
16 QIL letter of credit is available for "any of your
17 obligations." And Saint Vincents Hospital and Saint -- and
18 Catholic Medical Center, having merged, become one entity. And
19 the word "your" applies to them equally, because they are one
20 entity.

21 And when they signed off on that language in 2009,
22 they clearly were one entity. They also signed off on that
23 language in 2008. They signed off on that language in 2007,
24 and you get the point. Every year.

25 THE COURT: Okay. Give me your last name again.

1 MS. SHEIKH: Sheikh.

2 THE COURT: Ms. Sheikh, but in your response, you
3 focused on the "you" in the payment, and you said the "you" was
4 defined. Mr. Davis said that the affiliates were not defined,
5 but you say it was defined, as Catholic Medical Center, its
6 predecessor successors.

7 MR. DAVIS: And Your Honor --

8 MS. SHEIKH: It is defined in the payment agreement.
9 The payment defines --- the payment agreement defines "you,"
10 and we quote this language in our papers, in Paragraph 24.

11 THE COURT: He said that was in lowercase. But where
12 -- I know -- I see your -- I've got your quotes here. I just
13 don't see where they come from.

14 MS. SHEIKH: Well, I think "obligation" is in
15 lowercase, but "you" is -- and "client" are not in lowercase.
16 Those are uppercase and refer to the client on the title page,
17 which is Catholic Medical Centers ...

18 "-- its predecessors and successor organizations, and
19 each of its subsidiary, affiliated, or associated
20 organizations that are included as named insureds
21 under any of the policies, or their predecessors."

22 And "predecessors" is referring to predecessor
23 policies.

24 So it -- Saint Vincents Hospital is neither a
25 predecessor, nor a successor organization to CMC. And the

1 policies of the named insureds under the payment agreement do
2 not include the S -- the Saint Vincents Hospital policies. So
3 I --

4 THE COURT: They -- so --

5 MS. SHEIKH: I actually do not follow AIG's argument
6 to that --

7 THE COURT: Mr. Davis.

8 MS. SHEIKH: Mr. Davis' argument that -- that Saint
9 Vincents Hospital is obligated under the payment agreement.

10 THE COURT: So you're saying that the merger by Saint
11 Vincents Catholic Medical Center did not assume the Saint
12 Vincents Hospital obligations?

13 MS. SHEIKH: No.

14 THE COURT: So when --

15 MS. SHEIKH: The merger -- by the merger, Saint
16 Vincents Catholic Medical Centers of New York assumed Saint
17 Vincents Hospital's obligations. But Saint Vincents Hospital
18 has no obligation under the payment agreement to be assumed by
19 Saint Vincents Catholic Medical Center of New York.

20 Saint Vincents Catholic Medical Center -- Saint
21 Vincents Catholic Medical Center of New York may have assumed
22 Saint Vincents Hospital's obligations under the 1997 payment
23 agreement that's attached as Exhibit H to AIG's papers. But
24 there is no -- I don't believe that AIG -- Mr. Davis argues
25 anywhere in the papers that Saint Vincents Hospital is an --

1 has an obligation under the 1998 payment agreement. He's only
2 arguing that, by virtue of the merger or the incorporation by
3 merger of Saint Vincents Hospital and Saint Vincents Catholic
4 Medical Center of New York, that Saint Vincents Hospital is
5 obligated under the 1998 agreement. But I don't believe that
6 is sufficient to establish an obligation under the 1998 payment
7 agreement.

8 MR. DAVIS: If I may?

9 THE COURT: Sure.

10 MR. DAVIS: The 1998 agreement refers to the parties
11 obligated are the parties named in the schedule. The schedules
12 are defined as those schedules which are renewed from time to
13 time. The 2009 iteration of the schedule was the combined,
14 merged entity. And the combined, merged entity became subject
15 to the clause in the agreement that says, upon default, we may
16 apply the collateral, which is identified in the 2009 schedule
17 to be the QIL LOC, to "any of your obligations." There's no
18 way they can contend that, in 2009, when they signed that
19 schedule, that Saint Vincents Hospital's obligations were not
20 obligations of the merged entity. And the merged entity signed
21 the 2009 schedule.

22 THE COURT: Okay. Ten minutes, each one of you. And
23 here are your two issues, and I want to hear ten minutes on
24 them:

25 AIG requests a ruling that this Court lacks

1 jurisdiction over the issues of whether the amount sought by
2 AIG are secured or unsecured by the two letters of credit
3 provided by QIL. And AIG requests this Court to order
4 arbitration of the QIL collateral issues. Give me ten minutes.
5 Those are the basic issues. Let's hear it. Mr. Davis, it's
6 your motion.

7 MR. DAVIS: May I use the ELMO?

8 THE COURT: Absolutely. And I'm not ruling on the
9 cross-motions at this time, I just want to hear from you.
10 You've got ten minutes to figure out what you're going to say.

11 MR. DAVIS: I know what I'm going to say.

12 (Participants confer.)

13 THE COURT: No, you don't get ten minutes, Mr. Davis;
14 they get ten minutes.

15 MR. DAVIS: Oh, they go first.

16 THE COURT: No, you go first. It's your motion.

17 MR. DAVIS: Right. I just want to clear the field.

18 THE COURT: Okay.

19 MR. DAVIS: I came over here because of the ELMO.

20 THE COURT: Right. If you'll just pull that
21 microphone a little. Not that microphone, the microphone
22 that's on counsel table.

23 MR. DAVIS: Uh-huh.

24 THE COURT: If you'll just pull it a little bit closer
25 to you, I think we can all hear it.

1 MR. DAVIS: Okay.

2 THE COURT: And clearly state the exhibits you rely
3 on.

4 MR. DAVIS: Okay. As to jurisdiction, fundamentally,
5 the jurisdiction issue turns on, number one, Section 109 of the
6 Code. No dispute, QIL is an insurance company; no dispute, it
7 can't be a debtor; no dispute, it is not a debtor. So for that
8 reason alone, the Court lacks jurisdiction over the QIL letter
9 of credit or any property of QIL.

10 And I would like to take a moment and point out that
11 109 is based on a sound public policy, an important doctrine.
12 Insurance companies are different. Fundamentally, they're
13 different from commercial organizations because they take on
14 long-term, long-tail obligations. And the liquidation statutes
15 and the liquidation laws and rules that govern insurance
16 companies, in the Cayman Islands or in any state of the United
17 States, are designed to recognize and deal with the fact that
18 insurance companies take on long-term obligations. And there's
19 a whole different approach to how you liquidate an insurance
20 company and how you liquidate a commercial organization because
21 of the obligation of the insurance company to take on long-tail
22 obligations. That is why 109 was written into the law, and I
23 think it's a very sound and important principle. Nonetheless,
24 regardless of its reason, it is the law.

25 Second, QIL is merely a subsidiary. And for instance,

1 in Tower Automotive, Judge Gropper wrote:

2 "In Feldman v. Beck, the Second Circuit held that
3 bankruptcy jurisdiction did not extend so far as to
4 permit a referee to restrain state court proceedings
5 against a wholly owned subsidiary of the debtor, even
6 though the value of the debtor's stock holdings in the
7 subsidiary would be directly impacted by the results
8 of the state litigation."

9 And then it says, highlighted again:

10 "The only exception to this principle, according to
11 Beck" -- which is the Second Circuit -- "would be
12 proof" -- proof, not just an allegation -- "that the
13 subsidiary was a mere sham or conduit, rather than a
14 viable entity."

15 QIL, by the way -- and we can prove it if we had an
16 evidentiary hearing, has its own certified financial
17 statements, it has its own independent existence, it has its
18 own regulators, it complies with Cayman law. And there's no
19 claim, and there could be no claim that QIL is a sham. So
20 that's the second reason there's no jurisdiction.

21 The third reason there's no jurisdiction is the letter
22 of credit. Here, I would point to this decision in the Enron
23 case, written by District Court Judge McMahon. And in this
24 case, a creditor with a claim against one of the Enron entities
25 -- that Enron entity is referred to as "EMI" -- held a letter

1 of credit. They wanted to bring into the bankruptcy in New
2 York the question of the use of that letter of credit. And
3 Judge McMahon writes:

4 "First, the collateral is not property of the debtor's
5 estate."

6 The letter of credit.

7 "Neither the letter of credit that were posted as
8 collateral by EMI, nor the proceeds obtained by
9 Celtics when it drew on those letters of credit are
10 property of Enron's bankruptcy estate. The letter of
11 credit and their proceeds are property of the issuing
12 banks, not property of the debtors, on whose behalf
13 they were issued, and are not property of the estate
14 within the meaning of 11 U.S.C. 541. The proposition
15 is too well settled to warrant extended discussion."

16 And then there's a citation, and the Court continues:
17 "Since an adversary proceeding lies only to determine
18 the extent of a party's interest in property that is
19 part of the estate" -- citing the bankruptcy rules --
20 "it would seem that this adversary proceeding must be
21 dismissed on that basis alone."

22 That's the Enron, that's the letter of credit point.

23 So to recap on jurisdiction, you don't have
24 jurisdiction over property of an insurance company, you don't
25 have jurisdiction over property of a non-debtor subsidiary, and

1 you don't have jurisdiction over a letter of credit. Three
2 strikes, they're out. Now turning -- and any one strike,
3 they're actually out.

4 Turning to arbitration. The principle that has been,
5 I think, thoroughly now adopted by the circuits throughout the
6 United States, as exemplified by the Continental Thorpe case
7 cited in our brief, is that the Bankruptcy Court is obliged to
8 compel arbitration, to allow arbitration, if the dispute
9 involves state law, non-bankruptcy law, contractual rights. On
10 the other hand, the Bankruptcy Court has discretion to deny
11 arbitration when the source of the right being adjudicated is
12 the Bankruptcy Code.

13 The Hostess case is a perfect example of that. In the
14 Hostess case, the issue was whether to use cash collateral.
15 You could never take someone's cash collateral under state law
16 rights. There is no state law, non-bankruptcy law right to use
17 cash collateral. It only comes under the Bankruptcy Code.

18 And moreover, as the Court -- as the Hostess Court
19 pointed out, the Court was obligated to conduct a judicial
20 proceeding in that court to determine whether the standards for
21 use of cash collateral were met. And there was no way the
22 Court was going to -- was willing to let that issue go to
23 arbitration. That's a bankruptcy law issue.

24 In Continental, another case they talk about, the
25 Court, first of all, said that you must allow arbitration if it

1 involves a state, non-bankruptcy law issue. But what -- that
2 was a proof of claim in the Continental Thorpe case, in the
3 Ninth Circuit.

4 And what was the actual claim of breach of contract?
5 Continental's contract with the debtor in that case said the
6 debtor shall not assist anyone to assert claims against
7 Continental. The debtor entered into a Chapter 11 plan under
8 524(g) for asbestos cases of the Bankruptcy Code. An
9 elaborate, extensive plan -- I happened to have been
10 representing the AIG Companies in that case.

11 And the allegation was that the plan itself was a
12 breach of contract; that the plan -- the negotiation of and the
13 entry into the plan was a breach of that contractual provision
14 that Thorpe would not assist plaintiffs to assert asbestos
15 claims against Continental. The Court said, if ever there was
16 an issue that this Court has to decide, it's whether a plan
17 itself is legal. And the Court said, we're keeping this, we're
18 deciding, and the Court decided the plan was legal and
19 dismissed the claim, and the arbitration was not allowed.
20 Those are -- Hostess, Continental, that's when you don't have
21 arbitration, when it's the Bankruptcy Code that brings about
22 the issue.

23 In Hagerstown, the kind of issues that were kept and
24 not arbitrated were preference-type avoidance issues; issues
25 that arise under the Bankruptcy Code. But if the issue is

1 what's the rights and duties of a party under a non-bankruptcy
2 contract, that's the case -- those are the cases that all the
3 circuits, I think -- and again, I just cite you the cases in
4 our brief -- say belong in arbitration, and the Court should
5 not deny arbitration.

6 And lastly, concerning arbitration, the United States
7 Supreme Court has said, in a rather oft-cited case called Moses
8 Cone, that any -- and this is cited in our brief -- any doubts
9 concerning arbitability should be resolved in favor of
10 arbitration. And with that, I think I've addressed your two
11 questions.

12 THE COURT: Very good. Thank you.

13 Yes, Mr. Oswald.

14 MR. OSWALD: Thank you, Your Honor. I'll be brief,
15 because we do rely on our papers for the bulk of the two
16 questions.

17 Jurisdiction. We have proofs of claim filed in this
18 case against these debtors. One must determine the validity of
19 the proofs of claim, the amounts of the proofs of claim. Then
20 you can figure out what the classification of the proofs of
21 claim are.

22 As I said before, we don't disagree that the letter of
23 credit is not property of the Saint Vincents debtors. We
24 certainly have an interest in that -- proceeds and the
25 collateral that's been posted to back up these claims. That's

1 been our interest.

2 Similar to the Hagerstown case with turnover, and the
3 Hostess case with the cash collateral, and where we started
4 with AIG two years ago, when our firm first got involved with
5 these claims, was to seek a release of that collateral for the
6 benefit of these debtors. That's what started these wheels in
7 motion.

8 But for these four policies, for the claims that
9 emanate under the Saint Vincents pre-merger entity, we assert
10 they were not parties to that payment agreement, and we assert
11 that the jurisdiction of this Court meets the substantial core
12 test under Judge Drain's decision in Hostess. We believe
13 Hagerstown is applicable, as well. And frankly, as I said
14 before, I think the Thorpe case from the Eighth Circuit is
15 applicable, *vis-a-vis* the claims.

16 Saint Vincents does not seek and has not argued here
17 that arbitration is not favored. We're familiar with those
18 cases. I, myself, have taken liberty of the judges in this
19 Court, in particular, in Saint Vincents multiple mediations.
20 That's not the issue. But as to this issue, we believe it is
21 quintessentially one that this Court can determine.

22 The arbitration that's been referenced before, as I
23 said, that's proceeding, that has nothing to do with these
24 proofs of claim before the Court. That has to do with alleged
25 E&O claims that the -- that the debtors believe they have.

1 So wrapping it together as to the specific issue here
2 on this motion, which started with a position letter of the
3 debtors -- that's why we're a little bit out of order -- we
4 believe the Court can and does have jurisdiction to determine
5 that. Once we determine what the claim is -- and again, Mr.
6 Davis and I agree. I don't think we're too far apart on the
7 numbers. But that will lend to dealing next with the overall
8 claims, and we can address the larger issue of the turnover.

9 THE COURT: I always recommend y'all talk.

10 Any rebuttal, Mr. Davis?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Very good. You're only \$2 million apart.
13 You might as well talk in between time. I'm reserving
14 judgment. I am also reserving the right to ask you for a
15 clarification in writing on anything that I see. So very good.

16 MR. OSWALD: That's fine, Your Honor.

17 THE COURT: Court is in recess.

18 THE COURT OFFICER: All rise.

19 MR. OSWALD: Thank you.

20 MR. DAVIS: Thank you, Your Honor.

21 (Participants confer.)

22 (Proceedings concluded at 1:58 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter to the best of my knowledge and ability.



September 23, 2013

Coleen Rand, AAERT Cert. No. 341

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